



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930-2276

JAN 25 2016

John DeFriece
Environmental Engineer
Discharges Permits Program
Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, Delaware 19901

Subject: NPDES Permit Application Technical Assistance, Delaware City Refinery (NPDES Permit No. DE0000256)

Dear Mr. DeFriece,

This letter is a follow-up to our telephone conference call of November 10, 2015, with the Delaware City Refining Company, LLC, in regard to the status of the draft permit for the Delaware City Refinery (DCR) currently under review by your office and in response to a letter received from DCR dated December 7, 2015.

On March 18, 2015, we provided a technical guidance letter to you with recommended control, monitoring, and reporting measures suggested for inclusion in the draft permit for the DCR. On September 3, 2015, we provided an additional letter with clarification about our recommendations as well as clarification regarding our role in the permit review process under the revised Clean Water Act 316(b) Rule.

To reiterate, we are not requiring that you include the measures, that we previously provided, in your permit, but it is our understanding that including them in their entirety in the permit will allow the facility to be eligible for incidental take coverage under the May 19, 2014, Biological Opinion and Incidental Take Statement (ITS) that our NMFS headquarters issued to the Environmental Protection Agency (EPA) for the 316(b) Rule. Pursuant to the Endangered Species Act (ESA) section 7(o)(2), coverage under the ITS for a specified amount of take would provide an exemption from the ESA prohibition against take¹ in the event species listed by us are impinged, entrained, or otherwise taken at the DCR. As detailed in both letters, if all of our recommended measures are not included in the permit, then take coverage may be available through the ESA Section 10(a)(1)(B) permitting process. In this case, the facility will need to contact us for more information about the process.

¹ "Take" defined in ESA section 3(19) means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.



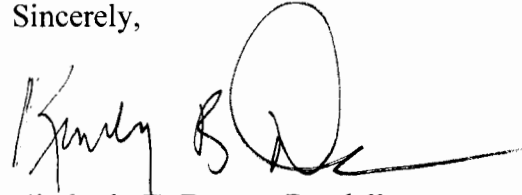
We continue to encourage you to include and require implementation of our recommended measures, as modified by our September 3, 2015, letter with regard to chronic and acute biomonitoring, as part of the issuance of your draft permit for the DCR to ensure that adverse effects, including take, are properly addressed under the ESA. However, you retain discretion and authority to include measures in, and implement, permits subject to the 316(b) Rule. EPA has delegated that responsibility to the States. As we understand it, there is nothing in the Rule or the Biological Opinion that prevents you from reviewing additional information from facilities during your deliberations, which may lead you to include or exclude recommendations we have made. It should be noted that a streamlined permit review process by the Services under our Biological Opinion has been specified as a two tier approach by our headquarters and by EPA. Prior to the draft permit being released to the public, the Services may review an application deemed complete by the State, and provide recommendations, which may subsequently be incorporated into the draft permit. Also, once the draft permit is released, the Services have another chance to review and provide comments before the final permit is issued. This process is specifically outlined as part of the Biological Opinion on the 316(b) Rule.

The DCR has indicated to us in our discussion on November 10, 2015, that they possess additional information that was not previously included in their application materials that you may choose to consider in making your final decision regarding which of our recommended control, monitoring, and reporting measures to include in the final permit. That being said, we maintain that our recommendations provide the most effective options to minimize effects to listed species and are adequate to provide take coverage under the Biological Opinion and existing ITS.

However, neither the Rule nor the Biological Opinion prohibits the State, using site-specific information and internal expertise on the waterbody and facility, from suggesting alternative measures to those recommended by us, to be included in the permit for protection of ESA listed species. If you do develop alternative measures, or otherwise modify or exclude measures we have recommended, we strongly encourage you to fully analyze and justify your course of action as part of the documentation for issuance of the permit. Although we have been in frequent contact with the DCR, we need to work directly with you to ensure your final action is provided coverage under the May 2014 Biological Opinion. To do this, we will need to review your analysis in support of your proposed measures to ensure your action provides adequate protection of listed species and minimization and avoidance of any effects from the facilities operations.

We would appreciate you notifying us of your decision regarding inclusion of our recommended measures in your draft permit, or the proposal of alternative or modified measures. I look forward to discussing this letter with you, the State, via telephone after you reviewed this letter. Let us know, at your earliest convenience, when you would like to discuss our recommended approach. Please contact Chris Vaccaro at 978-281-2167 or at Christine.vaccaro@noaa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly B. Damon-Randall". The signature is fluid and cursive, with a large, prominent "O" in the middle.

Kimberly B. Damon-Randall
Assistant Regional Administrator for
Protected Resources

EC: Jennifer Roushey, DNREC
Mark Smith, EPA Region 3
Thomas, Godlewski, Delaware City Refining Company, LLC
Harriet Nash, NMFS/OPR
Vaccaro, GARFO